

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

DERRIK A. DAVIS,

Petitioner,

vs.

WILLIAM SLAUGHTER, Director,
Montana Department of Corrections;
JAMES MACDONALD, Warden, CCC,
Shelby, Montana

CAUSE NO. CV 06-034-H-DWM-RKS

ORDER GRANTING MOTION TO FILE PRELIMINARY
STATEMENT AND FINDINGS AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE TO DENY MOTION TO
AMEND

Respondents.

This action concerns Petitioner Derrik A. Davis' Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 on July 27, 2006. (Document 1). Petitioner is a state prisoner proceeding pro se and in forma pauperis who has filed a motion to amend and a motion to submit a preliminary statement. (Document 5). The Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 2241 and 2254.

As the Court has not yet completed its prescreening process with regard to Mr. Davis' petition, the motion to submit a preliminary statement will be granted.

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served.

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However, Mr. Davis seeks to have Mike Ferriter named as a respondent in place of William Slaughter, former Director of the Montana Department of Corrections. Consistent with 28 U.S.C. § 2242 and the rules governing cases under § 2254, a state prisoner must name as the respondent the "state officer having custody" of him. Rule 2(a) of the Rules Governing Section 2254 Cases. Typically, the Respondent "is the warden of the facility in which the petitioner is incarcerated." Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). This requirement exists because a Writ of Habeas Corpus acts upon the custodian of the state prisoner, the person who will produce "the body" if directed to do so by the Court. See also Rumsfield v. Padilla, 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004).

As Mr. Davis is currently incarcerated at Crossroads Correctional Facility, the proper respondent, James McDonald, Warden of Crossroads, has already been named. Therefore, it is unnecessary to name William Slaughter or Mike Ferriter as Respondents.

Based upon the foregoing, the Court enters the following:

ORDER

Petitioner's Motion to Submit a Preliminary Statement (Document 5) is **GRANTED**.

Further, the Court enters the following:

RECOMMENDATION

Petitioner's Motion to Amend his habeas petition to substitute Mike Ferriter as a Respondent in place of William Slaughter (Document 5) should be **DENIED** and William Slaughter should be **DISMISSED** as a Respondent in this matter.

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**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT**

The Clerk of Court shall serve a copy of this Findings and Recommendation of the United States Magistrate Judge upon Petitioner. Petitioner is advised that pursuant to 28 U.S.C. § 636(b)(1), he has the right to file written objections to this Findings and Recommendation. Any objections to the Findings and Recommendation must be filed with the Clerk of Court within twenty (20) days after entry of this Findings and Recommendation as indicated on the Notice of Electronic Filing attached hereto, or objection is waived.

**PETITIONER IS CAUTIONED THAT HE MUST KEEP THE COURT ADVISED
OF ANY CHANGE OF ADDRESS AND A FAILURE TO DO SO COULD RESULT IN A
RECOMMENDATION OF DISMISSAL OF THIS CAUSE OF ACTION.**

DATED this 10th day of May, 2007.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge

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